

[ORAL ARGUMENT TO BE HEARD IN SEPTEMBER 2014]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ALLIANCE OF NONPROFIT MAILERS, et al.,

Petitioners,

v.

POSTAL REGULATORY COMMISSION,

Respondent.

Nos. 14-1009, 14-1010

**UNOPPOSED MOTION FOR EXTENSION OF TIME
IN WHICH TO FILE BRIEF FOR RESPONDENT**

The Postal Regulatory Commission hereby moves for a 7-day extension of time, to and including Thursday, May 29, 2014, to file its brief as respondent. Counsel for both sets of petitioners have authorized us to indicate that this motion is unopposed, so long as the extension will not affect the date on which this case is calendared for oral argument, and so long as other deadlines are adjusted to fit certain scheduling constraints. The parties have agreed to a revised briefing schedule, as set out below.

1. In the underlying agency proceedings, the Postal Regulatory Commission authorized the Postal Service to charge a temporary surcharge

to compensate for revenue lost due to the “Great Recession.” The Postal Service and a group of mailers have each filed petitions for review, which have been consolidated. The Postal Service urges that the Commission should have allowed a longer-term increase in prices, while the mailers urge that the Commission should not have authorized any increase in response to the recession.

2. The parties jointly agreed to a briefing schedule, under which oral argument could be calendared in September 2014. This Court adopted the parties’ proposed schedule and directed the clerk to “calendar these cases for oral argument on an appropriate date on the court’s September 2014 calendar.” Order, Mar. 19, 2014. Pursuant to that schedule, the Postal Service and the mailers filed opening briefs on April 15, 2014. The Commission’s brief as respondent is currently due May 22, 2014.

3. Daniel Tenny is the Department of Justice, Civil Division, Appellate Staff, attorney with principal responsibility for drafting the government’s brief. This extension is sought because of Mr. Tenny’s other litigation responsibilities, principally those related to this Court’s *en banc* consideration of *American Meat Institute v. USDA*, No. 13-5281 (D.C. Cir.). On April 4, 2014, on its own motion, this Court ordered that the *American*

Meat case be reheard by the Court sitting *en banc*. The Court directed the parties to file supplemental briefs on April 21, 2014, and scheduled the case for oral argument on May 19, 2014. Mr. Tenny had principal responsibility for drafting the government's supplemental brief, and will present oral argument before the *en banc* Court on May 19. Mr. Tenny also has had other litigation responsibilities, such as a brief filed in the Sixth Circuit on April 23 in *Fred Martin Motor Co. v. Chrysler Grp. LLC*, Nos. 13-2117, 13-2118, 13-2119 (6th Cir.), and a full-day, in-person mediation session on April 23 in Pasadena, California in *Valentini v. Shinseki*, Nos. 13-56836, 13-56880, 13-56842, 13-56887 (9th Cir.).

4. Counsel for both sets of petitioners have authorized us to represent that this motion is unopposed, on two conditions. First, counsel requested that any extension not affect the date on which this case is calendared for oral argument. Second, because counsel will be out of the country, the Postal Service requested that its brief not be due during or immediately after the week of June 30. To address these two issues, the parties agreed that the petitioners should be allocated an additional 7 days to file their reply briefs, but that the time for filing final briefs should be shortened.

5. Provided that it will not affect the Court's ability to hear this case in September 2014, the parties have agreed on the following revised briefing schedule:

Respondent's Brief	May 29, 2014
Brief for Respondent/Intervenor USPS	June 19, 2014
Brief for Respondent/Intervenor Mailers	June 19, 2014
Reply Brief for Mailer Petitioners and Supporting Intervenors	July 10, 2014
Reply Brief for Petitioner USPS	July 10, 2014
Deferred Appendix	July 14, 2014
Final Briefs	July 18, 2014
Oral Argument	September 2014

We respectfully request that the briefing schedule be modified in accordance with the parties' agreement.

Respectfully submitted,

MICHAEL S. RAAB

s/ Daniel Tenny

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MAY 2014

CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2014, I electronically filed the foregoing with the Clerk of the Court by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

s/ Daniel Tenny
DANIEL TENNY

ADDENDUM - CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), the undersigned counsel certifies as follows:

A. Parties and Amici.

All parties, intervenors, and amici appearing before this Court are listed in the briefs for the United States Postal Service (petitioner in No. 14-1010), and the Alliance of Nonprofit Mailers et al. (petitioners in No. 14-1009).

B. Rulings Under Review.

The ruling under review is Order No. 1926 of the Postal Regulatory Commission, dated December 24, 2013.

C. Related Cases.

These consolidated cases have not previously been before this Court or any other court. In *U.S. Postal Service v. Postal Regulatory Commission*, 640 F.3d 1263 (D.C. Cir. 2011), this Court resolved a challenge to an earlier Commission decision on the same topic.

s/ Daniel Tenny

Daniel Tenny